IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8125 of 1990
With
SPECIAL CIVIL APPLIATION No.7846 and 8138 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SK LEUWA

Versus

VADODARA DIST PANCHAYAT

Appearance:
MR JAYANT PATEL for Petitioner No. 1-2
MR HS MUNSHAW for Respondent No. 1
MR UDAY BHATT, AGP for Respondent No. 2

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 28/06/2001

ORAL JUDGEMENT

#. Special Civil Application Nos.8125 and 7846 of 1990 were ordered to be heard together with Special Civil

Application No.8138 of 1990. However, Mr.Patel, learned counsel for the petitioners of Special Civil Application Nos.8125 and 7846 of 1990 requested the Court that these two matters may be taken up for hearing as there is urgency and the matters are very old one. So far as Special Civil Application No.8138 of 1990 is concerned, Mrs.Mehta is not present. The said matter will be taken up for final hearing separately. Accordingly, Special Civil Application Nos.8125 and 7846 of 1990 are taken up for final hearing with the consent of the parties and are being disposed of by this common judgment and Special Civil Application No.8138 of 1990 is separated from this group of petitions and the same will be taken up for final hearing separately.

#. So far as Special Civil Application No.8125 of 1990 is concerned, the same is filed by the candidates whose names were included in the waiting list for the purpose of appointment on the post of Clerk (Accounts). The case of the petitioners in this petition is that they belonged to the Scheduled Caste community and that the District Panchayat, Vadodara issued the public advertisement inviting the applications for appointment on the post of Clerk (Accounts). In pursuance of the said advertisement, the petitioners applied and in the written test, they have successfully come out. The name of petitioner No.1 was placed at serial No.1 and the name of petitioner No.2 was placed at serial No.36 in the waiting list. It is the say of the petitioners that accordingly even though they are selected and their names were kept in the waiting list, the respondents have not operated the said list for future appointment and that even though there are vacant posts available, the said waiting list is not further operated. By filing this petition, therefore, it was prayed that the respondents may be directed to appoint the petitioners and the department may not give appointment to any one whose name is not included in the waiting list.

#. On behalf of the respondents, affidavit-in-reply has been filed which is at page 33. The said affidavit-in-reply has been filed by the Deputy District Development Officer, Vadodara. It is pointed out in the affidavit-in-reply that the names of the petitioners are in the waiting list. In para 5 of the said reply, it is stated that at the relevant time, 40 persons were included in the select list and all the 40 persons have already been given appointment on the said post of Clerk.

#. Mr.Munshaw, learned advocate for respondent No.1 has argued that as a matter of fact, the advertisement was

given for 38 posts as the same were sanctioned posts at the relevant time. Mr.Munshaw has also placed on record the minutes of the meeting which had taken place on 14.3.1983 wherein there is a reference about 38 sanctioned posts. It is argued by Mr.Munshaw that therefore on the basis of the advertisement, the department had filled up 40 posts from the list of the selected candidates and other candidates were kept in the waiting list. He submitted that therefore the posts which were advertised by the department, have been filled up from amongst the candidates who were on the select list and in that view of the matter, according to him, there was no question of operating the waiting list thereafter because the select list was already exhausted.

#. I have heard Mr.Patel for the petitioners and Mr.Munshaw, for the respondent - District Panchayat and Mr.Uday Bhatt, learned AGP for the respondent - State.

#. It is required to be noted that as per the say of the respondent - District Panchayat, the advertisement was issued for filling up 38 vacant posts of Clerk (Account). Ultimately, the select list of 40 candidates was prepared by the department. Over and above the same, waiting list was also prepared in which the names of the present petitioners were there. However, it seems that all the vacant posts for which the advertisement was given were filled up by the department from the select list. Thereafter, there was no question to operate the waiting list for future vacancies as the posts which were advertised by the respondent - District Panchayat were already filled up by way of operating the select / waiting list which was prepared for the said post. Under these circumstances, there was no necessity to operate the waiting list for future vacancies which may vacant after operating the select list. In this connection, reference is required to be made to the judgment of the Supreme Court reported in AIR 1994 SC 765. It has been observed in para 7 as under :

> "Having carefully considered the advertisement and the various averments in the affidavits and the counter-affidavits, we are of the view that the crucial question is whether in fact the advertisement and the initial decision of the High Court were meant to fill up only 32 vacancies and whether accordingly the High Court called for only 129 candidates from the list, who appeared for the written test in the ratio of 1 : 4 and whether consequently the whole selection process was confined to fill up only those 32

vacancies ? If the answer is in the affirmative then the question of the same list subsisting for one more year for filling up the subsequent vacancies did not arise in spite of the resolution of the High Court dated 24.11.90. As noted above in the reply affidavit, the Registrar of the High Court categorically stated that 32 vacancies were available and to fill up the same, 129 candidates were called for interview namely fourtimes of the number of vacancies and that the rest of the vacancies arose later on. To satisfy ourselves, we have also called for the relevant records from the High Court and the same is placed before us in a sealed cover. A perusal of the records shows that in the Full Court meeting on 5.5.90 it was resolved that on the basis of the result of the preliminary screening test, four times of number of candidates to be selected for appointment be called for interview. From the proceedings of another Full Court meeting held on 15.9.90 it is clear that it was resolved that 128 candidates alone in order of merit should be called for interview. The proceedings of the Full Court meeting dated 24.11.90 would show that the Full Court finalised the selection for filling up 32 vacancies only and sent a list of 32 candidates in order of merit. However, a further resolution was passed that if any further vacancy in the quota of the direct recruits was required to be filled up within a period of one year the same be filled up by recommending the candidates in order of merit from amongst the remaining candidates in the merit list. It is therefore crystal clear that the advertisement and the whole selection process that ensued were meant only to fill up 32 vacancies. Learned counsel for the respondents relying on the decisions of this Court in Kailash Chandra Sharma v.State of Haryana, 1989 Suppl (2) SCC 696 : (AIR 1990 SC 454) and O.P.Garg v. State of U.P., AIR 1991 SC 1202, contended that when there are temporary vacancies, the direct recruits should have their share of quota in respect of temporary vacancies also. As noted above, the temporary vacancies arose subsequently but even otherwise in the view we are taking namely that the particular advertisement and the consequent selection process were meant only to fill up 32 vacancies and not to fill up the other vacancies, the merit list prepared on the basis of the written test as well as the viva voce will hold

good only for the purpose of filling up those 32 vacancies and no further because the said process of selection for those 32 vacancies got exhausted and came to an end. If the same list has to be kept subsisting for the purpose of filling up other vacancies also that would naturally amount to deprivation of rights of other candidates who would have became eligible subsequent to the said advertisement and selection process."

Reference is also required to be made to the judgment of this Court reported in 1995(1) GLR 427. It has been observed in para 14 as under :

"It appears that under the Recruitment (Exam.) Rules, 1982 requisitions were sent by 15 Dist. Panchayats for recruitment to the posts of both Gram Sevak (Multipurpose) and Gram Sevak (Training & Visit). Accordingly, advertisements were also issued and eligible candidates were invited to compete for selection. It appears that select lists were accordingly prepared by respective Dist. Panchayats for both the cadres of Gram Sevaks, i.e. Gram Sevak (Multipurpose) and Gram Sevak (Training & Visit). Said select lists were prepared in the year 1983, 1984 or 1985. It is pertinent to note that the case of the State Govt. now before this Court is that in many districts requisitions were sent for larger number of posts than actually vacant posts and that unnecessarily unduly lengthy select lists were prepared. It is the case of the State Govt. that in some of the districts even the notified vacancies could not be filled up because of the economic measures restorted to by the could not be filled up because of the economic measures restorted to by the State Govt. in the years of severe drought, and the select lists which are sought to be enforced in this group of petitions are admittedly prepared under Recruitment (Exam.) Rules, 1982 and are referable to the vacancies which were then notified by the respective Dist. Panchayats. It is required to be notified that though the vacancies were notified as back as 1982-83, and though the examinations were conducted and interviews were held pursuant to public advertisement inordinately long period was consumed in preparation of select list, and even after preparation of select list number of vacancies were not filled up either because of measures of austerity adopted by the State Govt.

or because of economy drive followed by respective Dist. Panchayats. It may be mentioned at this stage that since some of Dist. Panchayats have prepared very lengthy select lists despite non-availability of vacancies large number of candidates were appointed. A glaring illustration is provided by Banaskantha and Jamnagar Dist. Panchayats. In Banaskantha District Panchayat notified vacancies were 67 as against which select list of 224 candidates was prepared and 157 candidates came to be appointed. Similarly, in Jamnagar District 2 vacancies were notified as against which select list of 125 candidates was prepared and surprisingly 70 candidates were appointed. Excepting Sabarkantha Dist. in all the districts serious irregularities were committed both in preparation of select list as well as in appointment of candidates. It is really shocking to note that such a grossly disproportionate number of persons thus came to be irregularly appointed. Initially, blame for this must undoubtedly lay at the doors of respective Dist. Panchayats, but the State Govt. cannot be excused for its inefficient and total lack of supervision. When such large number of persons are appointed despite non-availability of vacancies the State Govt. as well as the Development Commissioner should have arisen from slumber and should have taken immediate action. At this stage, belatedly after ten years to complain to the Court that large number of persons were wrongly recruited in various Dist. Panchayats does not behave or befit ideal administration of the State Govt. However, in this group of petitions it is not necessary to dilate on this issue and it is simply noted that in large number of Dist. Panchayats grossly disproportionate irregular appointments were made on the posts of Gram Sevak (Multipurpose) and Gram Sevak (Training & Visit)."

Under these circumstances, in view of the arguments of the respondents that the posts which were advertised have been filled up and select list is already exhausted, in my view, there is no question of operating the waiting list for appointment for future posts and therefore, I do not find any substance in the petition in view of the aforesaid settled legal position.

#. So far as Special Civil Application No.7846 of 1990

is concerned, the petitioners in the said petition are also in the waiting list and they are at serial No.29 and 38 as per the averments made in para 5. As a matter of fact, since the petitioners are not in the select list and their names are kept in the waiting list and in view of the fact that the said waiting list was prepared as back as in 1990, no relief can be given to the petitioners who are in the waiting list and they have no right to get appointment from the aforesaid waiting list. The petitioners have not stated that the department has not filled up the posts which were advertised by them. In that view of the matter and especially when the names of the petitioners were only in the waiting list, no relief can be granted to them.

#. In view of what is stated above, I do not find any substance in these petitions and the same are required to be dismissed and accordingly these petitions stand dismissed. Rule discharged in each of the petition. Interim relief if any in each of the petition stands vacated. No order as to costs.

#. Mr.Patel, learned advocate for the petitioners states that the interim relief in each of the petition may be extended for sometime. However, looking to the facts and circumstances of the case, the prayer for extension of interim relief cannot be granted and accordingly it is rejected.

(P.B.Majmudar,J)
(pathan)